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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/559,519	04/27/2000	Yury Bakshi	1999-0482	2307

7590 12/15/2003

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 12/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/559,519

Applicant(s)

BAKSHI, YURY

Examiner

Steven HD Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10 and 12-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-2, 4-10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colby (USP 6006264) in view of Wolf (USP 6374297).

Colby discloses (Figs 1-23 and col. 1, lines 9 to col. 19, lines 62) a method of controlling data transmissions in a network between at least one terminal and at least one server comprising determining a current status of the at least one server; determining a transmission rate of the at least one terminal based on the current status of the at least one server; and adjusting the transmissions from the at least one terminal to the at least one server based on the transmission rate (See col. 6, lines 29 to col. 9, lines 67 and col. 14, lines 5 to col. 17, lines 36, Fig 2, a content flow switch includes a controller for determining the load on the server for storing in the a

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memory having the data bases such content server database includes load on the servers; and flow admission control to prevent the server from overload and using Web flow redirector for redirect the flows away from overloaded server to least load server by performing a load balancing; See col. 6, lines 35-63; the flow switch determines the transmission rate of the client based on the load of the server in order to prevent overload on the server; See col.9, lines 1-67 and col. 14, lines 5-19); receiving an overload notification from one of at least one server and updating a local status indicator for the one of at least one server (See col. 7, lines 16-31); determining an overload status of each server based on whether any server is overloaded (See col. 7, lines 11-12); adjusting a local load coefficient based on the overload status (col. 7, lines 58 to col. 8, lines 5, adjusting weight for prevent congestion); includes decreasing the local load coefficient if the overload status indicates that all of the servers are overloaded and increasing the local load coefficient if the overload status indicates that none of the servers are overloaded (Fig 2 includes Flow admission control for blocking or rejecting the incoming request “increasing coefficient load” and admitting the incoming request by decreasing the load coefficient; See col. 9, 58-67, increasing the probability if the future request is satisfied decreasing the probability if the future request is not satisfied). However, Colby does not disclose a method modifying at least one local load weight if portion of the server is overload to move a load from at least one overloaded server to at least one non-overloaded server. In the same field of endeavor, Wolf discloses a method and system for load balancing of the servers by modifying the load weight of portion of overloaded server to shift a load from overloaded server to a least load server (See col. 3, lines 28-31).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and apparatus for shifting a load from a overloaded server to least load server as disclosed by Wolf into Colby's system. The motivation would have been to share the load on the server more effectively.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jain (USP 5633859) discloses a method and apparatus for congestion management in computer network using explicit rate indication by adjusting the load factor.

Takahashi (USP 6259705) discloses a method and apparatus for performing a load balancing between the servers.

Martin (USP 6263368) discloses a method and apparatus for performing a load balancing between the servers.

Umetsu (JP 10-224356) discloses a method and system for load control method.

Attanasio (USP 5919018) discloses a method and system for routing incoming request away from a overload server.

Yoshida (USP 6401121) discloses a method and system for load distribution.

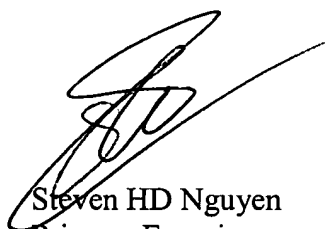
Choquier (USP 5774668) discloses a gateway using a service map that includes a load condition of the server to route request to the least load sever or moving the session of the overloaded server to least load server and using sliding windows to perform a flow control between client and server.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

A handwritten signature in black ink, appearing to be 'SHD', with a long horizontal stroke extending to the right.

Steven HD Nguyen
Primary Examiner
Art Unit 2665
12/10/03